

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

v

File No. 123327-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this __10th__ day of January 2012
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On September 13, 2011 XXXXX, authorized representative of his daughter XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on September 20, 2011.

The Petitioner has group health care benefits as an eligible dependent under her mother's health care coverage underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The terms of her coverage are defined in BCBSM's *Community Blue Group Benefits Certificate* (the certificate). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on September 29, 2011.

The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner suffers from chronic musculoskeletal and back pain. Petitioner's physician recommended the use of hydrotherapy and wrote a prescription for a hydrotherapy spa for relief of Petitioner's symptoms. The Petitioner purchased a hydrotherapy spa in October 2009 for

\$6,500.00. BCBSM denied coverage for the spa, ruling that it was not an item of durable medical equipment covered by Petitioner's certificate.

The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM maintained its decision and issued a final adverse determination dated July 8, 2011.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's hydrotherapy spa?

IV. ANALYSIS

Petitioner's Argument

The Petitioner believes BCBSM should provide coverage for the hydrotherapy spa because it qualifies as durable medical equipment under the terms of the certificate. In the request for external review Petitioner's father states:

Blue Cross Blue Shield (BCBS) states in their denial letter, on page 5.3, hot tubs and spas are also excluded with sauna baths. However the contract only excludes sauna baths not hot tubs and spas. Spas and hot tubs have medical benefits and by definition are totally different than sauna baths.

* * *

Spas are used in physical therapy and their use is a covered cost. With chronic pain the cost of going to physical therapy would cost more than the cost of the spa and saves BCBS money. The reason physical therapy is not effective for me is because the car ride inflames my back and causes muscle spasms. This eliminates the benefit gained from going to physical therapy. BCBS states they "do not pay for self-help device[s] not primarily medical in nature. . . ." A spa is medical in nature. In 1995, the British Journal of Rheumatology said, spa therapy has short and long term benefits in treating lower back pain. A later French study supports these findings. Also the New England Journal of Medicine (08-16-1999) reported that spas have a medical benefit.

BCBSM's Argument

In its final adverse determination of July 8, 2011, issued to the Petitioner's mother, BCBSM explained its decision:

You and your daughter are covered by the *Community Blue Group Benefits Certificate*. Page 5.2 explains that we pay our approved amount for the rental or purchase of durable medical equipment (DME) when prescribed by a physician or certified nurse practitioner and obtained from a DME supplier who meets BCBSM qualification standards. Page 5.3 further explains that we do not pay for

self-help devices not primarily medical in nature, such as sauna baths and elevators, which also excludes coverage for hot tubs/spas.

I realize that you are requesting consideration based on medical necessity. However, the item must first be adopted by BCBSM as a “covered service” before medical necessity can be considered. Furthermore, our call center notes support that customer service staff informed your husband on September 9, 2009, that “hot tubs” are not covered DME items. Thus, we unable to assume liability for your purchase on October 3, 2009.

Commissioner’s Review

The certificate provides coverage for DME when the criteria of its certificate are met. The certificate (pages 5.2 – 5.3) excludes coverage for exercise equipment and self-help items:

Section 5: Coverage for Other Health Care Services

Durable Medical Equipment

We pay our approved amount for rental or purchase of durable medical equipment when prescribed by a physician or certified nurse practitioner and obtained from a DME supplier who meets BCBSM qualification standards. In many instances we cover the same items covered by Medicare Part B as of the date of purchase or rental. In some instances however, BCBSM guidelines may differ. Please call your local customer service center for specific coverage information.

* * *

We do not pay for:

- Exercise and hygienic equipment, such as exercycles, Moore Wheel, bidet toilet seats and bathtub seats
- Deluxe equipment, such as motorized wheelchairs and beds, unless medically necessary and required so that patients can operate the equipment themselves
- Comfort and convenience items, such as bed boards, bathtub lifts, overbed tables, adjust-a-beds, telephone arms or air conditioners
- Physician’s equipment, such a stethoscopes
- Self-help devices not primarily medical in nature, such as sauna baths and elevators
- Experimental equipment

The Commissioner notes while the hot tub/spa was prescribed by her physician and may provide the Petitioner with relief from her symptoms, it is not a covered benefit as it is not primarily medical in nature. The Commissioner finds that BCBSM’s denial of coverage is consistent with the terms of the Petitioner’s coverage under the certificate and Medicare guidelines.

V. ORDER

The Commissioner upholds Blue Cross Blue Shield of Michigan's final adverse determination of July 8, 2011. BCBSM is not required to provide coverage for the Petitioner's hydrotherapy spa.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner